REMARKS

Restriction Requirement

In the Restriction Requirement, the Examiner requested Applicants to elect one of the following inventions:

Group I (claims 1 and 2) drawn to a polypeptide.

Group II (claims 3-6, 12, and 13) drawn to a polynucleotide.

Group III (claim 7) drawn to a host cell.

Group IV (claim 8) drawn to a transgenic organism.

Group V (claims 9 and 10) drawn to a method of producing a polypeptide.

Group VI (claim 11) drawn to an antibody.

Group VII (claims 14-16) drawn to a method of detection.

Group VIII (claims 17 and 18) drawn to a pharmaceutical composition.

Group IX (claim 28) drawn to a method for screening a compound.

Group X (claim 29) drawn to a method for assessing toxicity.

Applicants hereby elect, with traverse, to prosecute Group II, which includes and is drawn to Claims 3-6, 12 and 13. Applicants reserve the right to prosecute the subject matter of non-elected claims in subsequent divisional applications.

Applicants respectfully submit that claim 7 (Group III), directed to a host cell comprising the vector of claim 6, should properly be included in Group II with the claims directed to polynucleotides (3-6, 12, and 13). Applicants note that the Examiner has provided no reason why the inventions of Groups II and III are separate inventions. For the claims of both Groups, the critical feature is a nucleic acid; thus there is no additional search burden in examining both Groups. Clearly, if the claimed polynucleotides are novel, then host cells comprising the polynucleotides must also be novel, and thus the prior art search for the two sets of claims will completely overlap.

Applicants further note that claims corresponding to the polynucleotides, vectors, host cells, and methods of producing a polypeptide of Groups II, III, and V, although of different scope, were all examined together in a parent application, demonstrating that examination of all three groups poses no undue burden.

In addition, Claims 9 and 10 (Group V), as well as claims 14-16 (Group VII), claim 28 (Group IX), and claim 29 (Group X) are methods of use of the polynucleotides of Group I, which should be examined together, per the Commissioner's Notice in the Official Gazette of March 26, 1996, entitled "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai, In re Brouwer* and 35 U.S.C. § 103(b)" which sets forth the rules, upon allowance of product claims, for rejoinder of process claims covering the same scope of products. See also M.P.E.P. 821.04 as follows.

> Where product and process claims drawn to independent and distinct inventions are presented in the same application, applicant may be called upon under 35 U.S.C. 121 to elect claims to either the product or process. . . The claims to the nonelected invention will be withdrawn from further consideration under 37 C.F.R. 1.142. . . . However, if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.

Applicants respectfully submit that there is minimal additional burden on the Examiner to examine claims 7, 9, 10, 14-16, 28, and 29 in addition to the claims elected in the present application, particularly in view of the searches and examination which were already conducted with respect to the previously issued claims and the additional burden on Applicants to file, prosecute and maintain yet another application in this family, and respectfully request that the Examiner consider doing so.

Thus, Applicants request reconsideration and withdrawal of the Restriction Requirement and examination of the claims in Groups II, III, V, IX, and X.

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. 09-0108.

Respectfully submitted,

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